

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
Randall Tjaden and Tjaden Contractors, Inc.	NO. 2013-AQ- 11 NO. 2013-SW- 07

TO: Tjaden Contractors, Inc.  
Randall Tjaden, Registered Agent  
23660 1<sup>st</sup> Street  
Eldora, Iowa 50267

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Randall Tjaden and Tjaden Contractors, Inc., (Tjaden Contractors) for the purpose of resolving violations pertaining to open burning and open dumping of waste material. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Clay Swanson  
Iowa Department of Natural Resources  
Field Office No. 2  
2300 15<sup>th</sup> Street S.W.  
Mason City, Iowa 50401  
Phone: 641-424-9342

**Relating to legal requirements:**

Carrie Schoenebaum, Attorney for the  
DNR  
Iowa Department of Natural Resources  
502 E 9<sup>th</sup> Street  
Des Moines, Iowa 50309  
Phone: 515/281-0824

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: RANDALL TJADEN AND TJADEN CONTRACTORS, INC.

permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. On November 5, 2009, DNR Field Office No. 2 received a complaint that Tjaden Contractors was contracting for home repairs in the Eldora, Iowa, area and that some of the waste generated from these activities was being open burned at the residence of Randall Tjaden. Clay Swanson and Michelle Johnson of DNR Field Office No. 2 went to the Randall Tjaden residence and observed a smoldering pile apparently containing construction and demolition waste material (burn site). The burn site was located about 100 feet east of First Street in Eldora and measured about twenty feet in diameter. The ash and debris at the burn site contained paneling, cardboard, steel bands, cans, lumber, metal edging, sheet rock, pallets, vinyl siding, a light fixture, and tree branches.

2. A November 17, 2009, Notice of Violation letter was sent by DNR Field Office No. 2 to Randall Tjaden at Tjaden Contractors, citing the violations of illegal open dumping and illegal open burning.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 Iowa Administrative Code (IAC) chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The burning of trade waste is specifically prohibited. The above facts demonstrate violations of this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

4. 567 IAC 100.4 prohibits a private or public agency dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The above facts demonstrate non-compliance with this provision.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: RANDALL TJADEN AND TJADEN CONTRACTORS, INC.

**V. ORDER**

THEREFORE, DNR orders, and Randall Tjaden and Tjaden Contractors agree to do, the following:

1. Immediately halt improper illegal open dumping and open burning of solid waste at any location in the State of Iowa, and comply in the future with all state and local requirements regarding the proper disposal of solid waste and the prohibition against illegal open burning; and

2. Pay a penalty of \$1,000.00 within 30 days of the date this order is signed by the Director;

**VI. PENALTY**

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$1,000.00 is assessed. The penalty must be paid within 60 days of the date this order is signed by the Director. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

Iowa Code section 455B.307 (3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Randall Tjaden and Tjaden Contractors have achieved an economic benefit from open burning and improper waste disposal. They have saved time, labor, and landfill costs by not timely and properly removing, transporting and disposing of the solid waste from the site. Therefore, a penalty of \$250.00 is assessed for economic benefit.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: RANDALL TJADEN AND TJADEN CONTRACTORS, INC.

Gravity of the Violation – The burning of solid wastes releases hazardous air pollutants, particulate matter, and other pollutants. These air pollutants pose a health risk to persons breathing, particularly persons with pre-existing respiratory problems. Further, the pollutants resulting from open burning may pollute groundwater, and pose a risk to both human health and the environment. The violation threatens the integrity of the regulatory program because compliance with the open burning regulations is required of all persons in this state. Further, the burning of trade waste is specifically prohibited by Iowa law. Compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Therefore, \$500.00 is assessed for the gravity of these violations.

Culpability – Randall Tjaden and Tjaden Contractors have a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that their conduct is subject to DNR's rules. Therefore, \$250.00 is assessed for this factor.

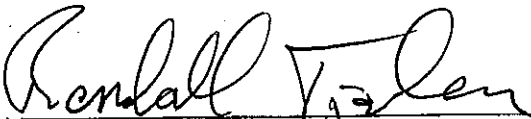
**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of Randall Tjaden and Tjaden Contractors. For that reason, Randall Tjaden and Tjaden Contractors waive their rights to appeal this order or any part thereof.

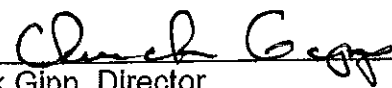
IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: RANDALL TJADEN AND TJADEN CONTRACTORS, INC.

VIII. NONCOMPLIANCE

Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.

  
Randall Tjaden for Tjaden Contractors, Inc.

Dated this 13 day of  
March, 2013.

  
Chuck Gipp, Director  
Iowa Department of Natural Resources

Dated this 18<sup>th</sup> day of  
March, 2013.

Hardin County Air Quality file; Anne Preziosi; Field Office No. 2; VII.C.1